



AUSTRALIAN DENTAL
ASSOCIATION INC.

Australian Dental Association Inc.

Development of Governance Standards

Department of the Treasury

15 February 2013

**Authorised by
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Federal President**

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1. About the Australian Dental Association Inc.

The Australian Dental Association Inc. (ADA) is the peak national professional body representing about 13,600 registered dentists engaged in clinical practice and student dentists. ADA members work in both the public and private sectors. The ADA represents the vast majority of dental care providers.

The primary objectives of the ADA are to:

- Encourage the improvement of the oral and general health of the public and to advance and promote the ethics, art and science of dentistry; and
- To support members of the Association in enhancing their ability to provide safe, high quality professional oral healthcare.

There are ADA Branches in all States and Territories other than in the ACT, with individual dentists belonging to both their home Branch and the national body. Further information on the activities of the ADA and its Branches can be found at www.ada.org.au.

2. Introduction

The ADA welcomes the opportunity to provide comment on the Assistant Treasurer's Consultation Paper *Development of governance standards* (CP). The CP seeks to comment on the coverage and focus of the governance standards, as well as provide an opportunity to interested stakeholders to shape the draft governance standards.

The comments below are framed in response to questions raised by the CP. The ADA's comments are based on consultations with its members and Branches.

We trust the ADA's comments provide a constructive contribution to the further refinement and implementation of the ACNC.



3. Executive Summary

Overall the ADA agrees with the nature and thrust of the CP, particularly when it sets the “Background” for the review that is to occur to this sector. The ADA understands that this paper is considering coverage and focus of the governance standards as they apply to charities.

A general concern the ADA has with the CP is that it may not adequately address the sector of NFPs in which the ADA engages – namely that of the “Professional Association”. Professional associations (PAs) operate in a very distinct area of the NFP sector and as such need to be specifically addressed.

The ADA for instance in its Constitution states that its primary objectives are:

“To encourage the improvement of the oral and general health of the public and to advance and promote the ethics, art and science of dentistry.

“To support members of the Association in enhancing their ability to provide safe, high quality, professional oral healthcare.”

These objects represent a mixture of purposes that are for the general public good while at the same time requiring the organisation to meet the specific needs of its membership in delivering high-quality care to the public. It would be rare for a PA to have donors and clearly identifiable beneficiaries outside its membership. Most NFP entities have, as the CP recognises, donors, beneficiaries, volunteers, government, and members. PAs by and large only have members and the function of the PA is to provide service/assistance/guidance to the members and in so doing assist in the delivery of services for the public good. The ADA is unique in that alongside this member services function, its other primary objective is to promote oral health to the Australian public.

With that in mind this submission nonetheless has provided feedback to the development of these governance standards as they apply to charities. In general, the comments made in each section of this response can have application to all parts of the NFP sector, including PAs.

4. Discussion

The ADA's comments are made with respect to specific sections of the CP as numbered.

a. 2.3 The ACNC regulatory framework and governance standards

2.3.2 What is specified in the ACNC Act?

The ADA supports the *Australian Charities and Not-for-profits Commission (Consequential and Transitional Act) 2012's* consequential amendments to the *Corporations Act 2001* (CA Act) to address governance for charities that are incorporated as companies (most often as companies limited guarantees) to 'turn off' certain director duties for those directors of corporations that are registered charities and also registered with the Australian Securities and Investments Commission (ASIC). The ADA finds it appropriate that under this regime the registered charity will be required to take reasonable steps to ensure those on their governing body (their responsible entities) comply with equivalent standards that are specifically tailored for the NFP sector.

The ADA notes that the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) allows for the establishment of a framework for a set of minimum governance standards to apply to registered charities. The ADA supports the intention of *ACNC Act* which requires charities to comply with these standards to be, and remain, registered with the ACNC.

2.3.4 What are the principles-based governance standards and how can an entity comply?

The ADA supports the adoption of 'principles based standards' that specify the outcome allowing registered charities to decide how to achieve the outcome that it aims to achieve in its operations, taking into account their particular circumstances (including their size).

2.3.5. What will happen if a charity breaches the governance standards?

The ADA supports the CP's view that the charity, once registered with the ACNC, is responsible for assessing its own compliance with the governance standards. Only where serious cases of noncompliance, including persistent and significant non-compliance arise, should the ACNC take action. The ADA supports the range of factors the ACNC has to consider before exercising their powers as outlined under the ACNC Act.

3. Possible governance standards

The ADA has considered the six draft governance standards and makes the following comments:

3.1 Draft Governance Standard 1: Purposes and NFP character of a charity

Similar to the principles based approach, the ADA supports the standard's position that it will not proscribe how information about a charity's purpose is made available to the public (for instance, a charity providing such information on request could be considered adequate). This acknowledges the practical realities of charities'



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operations and the fact that these entities would have no qualms about disclosing such information on request.

3.2 Draft governance standard 2: accountability to members:

The ADA supports the ‘turning off’ of certain governance meeting requirements as they would otherwise apply to charities once the governance standards come into effect. The ADA agrees that this standard “would increase the flexibility of registered charities that are companies to decide how best to be accountable to their members in their particular circumstances”. Similarly the ADA supports the CP view that were a charity to similarly meet the requirements of incorporated associations’ legislation, it would also be complying with this proposed governance standard.

3.3 Draft governance standard 3: compliance with Australian laws

While the ADA supports the requirement that a registered entity not perform conduct that is an indictable offence under Australian law, or incur a civil penalty of 60 units or more, it is concerned about the CP’s view that if “the ACNC reasonably believes a charity has engaged in an offence of fraud, the charity would be in breach of the governance standards and the ACNC could take action”. There must be more clarity in this standard to ensure that the ACNC only acts on a finding made by an Australian court of law that such a relevant offence and/or penalty has been imposed, and no longer subject to legal review.

3.4 Draft governance standard 4:

No comment.

3.5 Draft governance standard 5: suitability of responsible entities

The ADA supports the provision allowing for exemptions to be issued by the commissioner to allow an individual to be a responsible entity for a particular registered entity if the commissioner believes it is reasonable to do so in the circumstances (clause 45.25(5)).

3.6 Draft governance standard 6: accountability to members

The ADA notes that this proposed standard will not generally affect the application of, or the consequences of breach of, higher duties and standards outlined in other laws.

While the general requirement that the responsible entity does not have a material personal interest in the subject matter of the decision is an appropriate requirement to give rise to the protections outlined in this standard, the ADA believes some modification is required.

In particular, the protection should also be able to apply to a situation where the responsible entity declares to having such a material personal interest in the subject matter of the decision. The protection should extend to the situation where when this declaration is made and the appropriate ‘higher’ governing authority within the charity (such as the Board) takes the declaration into account and nonetheless authorises the action taken.

The ADA appreciates the principles outlined in the CP about situations where occasionally a registered charity cannot disclose the conflict to its members or other directors and can do so to the Commissioner. However, this situation appears to not be specifically outlined in the draft standards and should be made more explicit. The ADA welcomes the commitment that the ACNC “will publish guidance on which



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conflicts of interest it will not require disclosure for”, acknowledging that low risk conflicts, which can be material at times, do not warrant the compliance costs that could be incurred when reporting.

Since the CP states that the governance standards and its protections are based on the duties that currently exist under statute and the general law, the ADA does not support the view that being a volunteer responsible entity could be a relevant factor in determining the scope of the duty outlined in this standard. The accountability requirements as outlined in the existing general law (such as the CA) do not include consideration of whether or not a responsible entity is a volunteer or not.

Thank you for the opportunity to respond.

If you seek any further information, please contact ceo@ada.org.au or 02 9906 4412.

Yours sincerely,

A handwritten signature in black ink that reads 'Karin Alexander'.

Dr Karin Alexander

President

Australian Dental Association Inc.

15 February 2012.